Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
Joint Applications of MCI WorldCom, Inc., and Sprint Corporation for Consent to Transfer of Control	)	CC Docket No. 99-333

BELL ATLANTIC CORPORATION'S PETITION TO CONDITION APPROVAL ON ADEQUATE DIVESTITURE OF INTERNET BACKBONE ASSETS

John Thorne
Robert J. Zastrow
BELL ATLANTIC CORPORATION
1320 North Courthouse Rd.
Arlington, VA 22201
(703) 974-1600

Counsel for Bell Atlantic Corporation

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Bell Atlantic Corporation petitions the Commission to condition any approval of the Joint Applications for Consent to Transfer of Control filed by MCI WorldCom, Inc., and Sprint Corporation upon the divestiture of sufficient Internet backbone assets to prevent injury to competition in the Internet backbone market.

Introduction and Summary

The proposed merger of MCI WorldCom and Sprint would worsen MCI WorldCom's already dangerous dominance over the Internet backbone market. MCI WorldCom and Sprint are, respectively, the largest and second-largest providers of Internet backbone services in the United States. Having just spun off MCI's backbone to Cable & Wireless in order to complete its last big merger, MCI WorldCom now proposes to replace MCI's lost backbone with Sprint's. That absurd proposal, which would put over half of all Internet traffic in WorldCom's hands, cannot be taken seriously. Nor can the problem be remedied by a simple spin-off of Sprint's backbone. As the failed spin off to Cable & Wireless shows, the divested property must be robust to survive the

divestiture with its customer base intact. The Commission cannot approve the Joint Applications as proposed and, at the very least, must require that UUNet's backbone be spun off as a condition of approving this merger.

Discussion

I. The Merger Would Worsen MCI WorldCom's Already Dangerous Dominance in the Internet Backbone Market

The Commission has indicated that Internet backbone services, defined as "the transporting and routing of packets between and among ISPs [Internet Service Providers] and regional backbone networks, constitutes a separate relevant product market."[1] Despite the Department of Justice's insistence that MCI sell its backbone to merge with WorldCom, the resulting company (MCI WorldCom) dominates this market, while Sprint is the second-largest backbone provider. According to industry estimates, the proposed merger of the two largest players in the market would create an Internet backbone provider more than four times as large as its nearest competitor and with a market share as high as 70 percent.[2] On average, the industry estimates point to a post-merger HHI nearly twice that identified in the Merger Guidelines as indicating a market that is "highly concentrated."[3] In such markets, "it will be presumed that mergers producing an increase in the HHI of more than 100 points are likely to create or enhance market power or

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[1] *In the Matter of Application of WorldCom, Inc. and MCI Communications Corp. for Transfer of Control of MCI Communications Corp. to WorldCom, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 18025, ¶148 (rel. Sept. 14, 1998) [hereinafter *"MCI/WorldCom Order"*].

[2] *See* T.J. Erickson, *ISP Mating Rituals: Sprint Acquisition Means Network Fire Sale*, Boardwatch Magazine at 42 (Dec. 1999) [hereinafter *"December 1999 Boardwatch"*]

[3] *See* United States Dep't of Justice Antitrust Div., *Horizontal Merger Guidelines* §1.5, www.usdoj.gov/atr/public/guidelines/horiz_book/15.html (visited Feb. 15, 1999).

facilitate its exercise."[4] Even using the most conservative estimate of the market shares, the proposed merger would produce a change in HHI of 556 points and is therefore presumptively unlawful.

Estimates of Market Concentration in the Internet Backbone Market Following an MCI WorldCom/Sprint Merger		
Estimate/Source	Post-Merger Market Share	Minimum Post-Merger HHI*
Boardwatch Magazine T.J. Erickson, *ISP Mating Rituals: Sprint Acquisition Means Network Fire Sale*, Boardwatch Magazine at 42 (Dec. 1999).	34%	1177
Yankee Group M. Mosquera, *Sprint Buy Gives MCI WorldCom More Muscle*, TechWeb: Technology News, http://www.techweb.com (Oct. 15, 1999).	"up to 70%"	4900
iAdvance J. O'Dwyer, *Mccurry, Molinari Seek to Speed Up 'Net Access*, O'Dwyer's PR Services Report at 44 (Dec. 1999).	"two-thirds"	4444
Network World F. Dzubeck, *Duopolies Can Be Just as Bad as Monopolies*, Network World at 51 (Nov. 22, 1999).	"almost 70%"	4900
Mergers & Acquisitions Journal J. Harrison, *In the Spotlight: MCI's Grand Maneuver in the Race to Offer Telecom Service Bundles*, Mergers and Acquisitions Journal (Jan. 1, 2000).	MCI WorldCom carries "more than 50%"	2500
Mean	58%	3584**
* Represents the square of WorldCom's post-merger market share; the actual HHI is higher, since the squared shares of other market participants must be added to this figure. **Mean of calculated HHIs, as opposed to HHI calculated from mean of market share.		

[4] *Id.* § 1.51.

The most conservative market share estimate in the table (34 percent), which MCI WorldCom and Sprint included as attachment 4 of their Supplemental Internet Submission in these proceedings, reflects the simple ***number*** of downstream ISPs connected to each backbone. This measure understates the importance of MCI WorldCom and Sprint in the backbone services market, since a relatively small number of ISPs generate the lion's share of Internet traffic. AOL, the largest ISP, has over 23.5 million subscribers,[5] representing rougly 45% of all U.S. subscribers.[6] The ten largest ISPs together have some 36 million subscribers, representing roughly 75% of all U.S. subscribers.[7] By contrast, industry analyst reports indicate that there are 6,000 ISPs in the United States with fewer than 100,000 subscribers[8] and over 4,800 ISPs with fewer than 5,000 subscribers.[9] Accordingly, the number of ISP connections is a poor proxy for the amount of traffic a backbone carries or the amount of revenues it generates. The figures are especially misleading in this case because MCI WorldCom is under contract as "AOL's largest network service provider."[10] The Commission should not credit the artificially low figure for market share that the ISP-counting methodology generates.

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[5] *See* America Online Press Release, *America Online and Time Warner Announce New Content & Promotional Agreements* (Feb. 16, 2000) (of the 23.5 million, approximately 2.5 million subscribe to AOL's CompuServe service).

[6] See AOL Time Warner: World's First Internet-Age Media and Communications Company, Business Wire, (Jan. 10, 2000)

[7] *See* Patricia Fusco, *Who's No. 2*, InternetNews.com (Jan. 21, 2000), http:// www.internetnews.com/isp-news/article/0,1087,8_290601,00.html (visited Feb. 2, 2000).

[8] *See* Wall Street Transcript Corp., Investext Rpt. No. 2000811, CEO Interview: Jay Atlas, Ariel Corporation (ADSP) – Company Report at *2 (Nov. 8, 1999) (interview with Jay Atlas, CEO, Ariel Corporation).

[9] *See* IPO Maven, Investext Rpt. No. 2819250, Flashnet Communications, Inc. – Company Report at *1 (Jan. 1, 1999).

[10] WorldCom Press Release, *WorldCom/CompuServe Merger Completed* (Feb. 2, 1998).

Based on the HHI and market share numbers in the above table, the proposed merger deserves the closest scrutiny, yet the threat to competition is even greater than these numbers indicate. As the Commission has acknowledged, "[c]ertain systems, such as computer or telephone systems, become more attractive to customers as more customers use them, a phenomenon called 'network effects' in the economics literature."[11] Due to the network effects inherent in the backbone services market, the enormous size of WorldCom's post-merger network would give it power to set prices and control quality of service to its own advantage, leading more and more customers to defect to its own network. Such developments would spell the end of settlement-free peering arrangements among backbone providers.

Most interconnection arrangements among Internet constituent networks fall into two categories. Either they are "peering" arrangements, in which there is no charge for the interconnection but there are restrictions on the type of data that can be exchanged, or they are "transit" arrangements, in which there are no restrictions on data interchange, but there is a charge for the service.[12] Historically, all Internet backbone providers treated each other as peers and exchanged traffic with each other at no charge. Then, led by WorldCom's UUNet in the Spring of 1997, the largest backbone providers ended free

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[11] *AT&T Corp., British Telecommunications, plc, VLT Co., L.L.C., Violet License Co. LLC, and TNV [Bahamas] Ltd. Applications For Grant of Section 214 Authority, Modification of Authorizations and Assignment of Licenses in Connection With the Proposed Joint Venture Between AT&T Corp. and British Telecommunications, plc.*, Memorandum Opinion and Order, IB Docket No. 98-212, FCC 99-313 ¶54 n.123 (rel. Oct. 29, 1999) [hereinafter *"AT&T/BT Order"*] (citing Michael Katz and Carl Shapiro, *Systems Competiton and Network Effects*, Journal of Economic Perspectives, Vol. 8, No. 2, at 93-115).

[12] *See* The Commission of the European Communities, Decision of 8 July, 1998, Case IV/M.1069—WorldCom/MCI ¶ 31 [hereinafter *"EC Backbone Decision"*].

peering with all but the largest five or so backbone providers.[13] The largest backbone providers also eschew public interconnection points (which smaller backbone providers and ISPs must use) and instead exchange traffic with each other directly at private exchange points which offer higher quality interconnection.[14]

In their Supplemental Internet Submission in these proceedings, MCI WorldCom and Sprint admit that a decision to enter peering arrangements depends upon "how much traffic one provider exchanges with another provider at any particular interconnection point and whether each ISP provides roughly equivalent value to the other in this agreement, so that entities bear comparable costs and derive comparable benefits with respect to the peering arrangement."[15] With over four times the share of its nearest competitor, a post-merger WorldCom would have no peers. The consequence of moving from peering arrangements to transit arrangements, as Sprint itself has in the past recognized, would be to "make competition difficult, or even impossible," by raising the costs of smaller providers and deterring entry.[16]

As the Commission said of the earlier proposed merger of MCI's backbone into WorldCom's, the combined entity could use its market dominance to "increase the costs

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[13] *See* UUNet Press Release, , *UUNET Details Peering Strategy* (May 12, 1997) ("UUNET will no longer accept peering requests from ISPs whose infrastructures do not allow for the exchange of similar traffic levels.").

[14] *See generally* J. Winkleman, *Getting Connected*, America's Network at 30 (Aug. 15, 1998).

[15] Supplemental Internet Submission at 18.

[16] Comments of Sprint Corporation, *Applications of WorldCom, Inc. and MCI Communications Corp. for Transfer of Control of MCI Communications to WorldCom, Inc.*, CC Dkt. No. 97-211, at 4 (FCC filed Mar. 13, 1998) [hereinafter *Sprint's MCI/WorldCom Comments*]; *see also MCI/WorldCom Order* ¶150; *EC Backbone Decision* ¶ 94

of interconnection . . . which would ultimately increase end users' prices."[17] In addition, the company "would degrade the quality of interconnection with rivals in order to induce their rivals' customers to migrate to [MCI WorldCom's] network."[18] The European Commission noted that the combination "would create a network of such absolute and relative size that the combined entity could behave to an appreciable extent independently of its competitors and customers."[19] All this is equally true of the current proposed merger.

II. A Spin-Off of Sprint's Backbone Is Insufficient To Prevent Competitive Harm

MCI WorldCom and Sprint have declared their willingness "to work cooperatively with policymakers to address and resolve concerns that they may have regarding Sprint's Internet backbone business."[20] This is evidently a thinly veiled offer to spin off Sprint's backbone business just as MCI's was spun off. The sale of MCI's backbone to Cable & Wireless, however, has failed to serve its intended purpose of maintaining the degree of competition in the industry that existed before the MCI/WorldCom merger. Cable & Wireless's backbone has been plagued by various technical and other problems, allegedly due to MCI WorldCom's failure to live up to the terms of the divestiture contract.[21] As a result, Cable & Wireless's share of downstream

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[17] *MCI/WorldCom Order* ¶ 149.

[18] *Ibid.*

[19] *EC Backbone Decision* ¶ 117.

[20] *Joint Applications for Transfer of Control*, Supplemental Internet Submission, CC Docket No. 99-333 (FCC filed Jan. 14, 2000), at 1.

[21] *See* Complaint, *Cable & Wireless USA, Inc. v. MCI WorldCom, Inc.*, No. 99-204, ¶¶ 37-40 (D. Del., filed Mar. 31, 1999).

ISP connections has plunged from 29.3 percent to 8.1 percent.[22] Whatever the cause of the problems, the result has been to hobble Cable & Wireless as a competitor and consolidate MCI WorldCom's hold over the backbone market.

Rather than allowing history to repeat itself, to the detriment of competition in the Internet backbone market, the Commission should not allow the proposed merger between MCI WorldCom and Sprint unless, at a minimum, WorldCom spins off a more robust competitor than Sprint's network alone. By requiring MCI WorldCom to divest UUNet's backbone rather than Sprint's, the Commission would be more likely to enhance competition in the highly concentrated backbone market. The larger size and superior reputation of that backbone would allow it better to withstand the trauma that has plagued Cable & Wireless's backbone business since the divestiture.

Conclusion

The Commission requires applicants for transfer of control to make an affirmative showing that a merger ***enhances*** competition.[23] Far from enhancing competition, the proposed merger of MCI WorldCom and Sprint threatens to raise prices, limit output, and otherwise impair competition in the market for Internet backbone services. The

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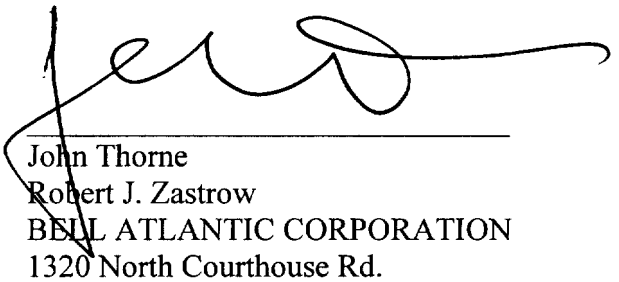
[22] *See December 1999 Boardwatch* at 42; B. McCarthy, *Introduction to the Directory of Internet Service Providers*, Boardwatch Magazine's Directory of Internet Service Providers at 4 (Winter 1998-Spring 1999). The 29.3% is a pro forma figure, representing the sum of the shares of MCI and Cable & Wireless before the MCI/WorldCom merger. The precipitous drop in the number of ISP connections evidences a large number of customer defections. Although the number of ISP connections by itself is not a reliable indicator of market share (see page 4, *supra*), there is no reason to doubt that the *decline* in the number of ISP connections reflects a similar decline in traffic and revenues.

[23] *See, e.g., Applications of NYNEX Corp., Transferor, and Bell Atlantic Corp., Transferee, for Consent to Transfer Control of NYNEX Corp. and Its Subsidiaries*, Memorandum Opinion and Order, 12 FCC Rcd 19,985, ¶¶ 37-38 (1997).

Commission should therefore require that the parties spin off UUNet's Internet backbone in order to ensure robust competition in the Internet backbone market.

Respectfully submitted,



February 18, 2000

John Thorne
Robert J. Zastrow
BELL ATLANTIC CORPORATION
1320 North Courthouse Rd.
Arlington, VA 22201
(703) 974-1600

Counsel for Bell Atlantic Corporation

CERTIFICATE OF SERVICE

I, Shannon K. Thrash, hereby certify that on this 18th day of February, 2000, copies of the Bell Atlantic Corporation's Petition to Condition Approval on Adequate Divestiture of Internet Backbone Assets was served upon the parties in the service list below by hand delivery or first class United States mail:

Service List:

Magalie Roman Salas, Esq. (†)
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554
(202) 418-0303

International Transcription Service, Inc.(†)
Federal Communications Commission
445 12th Street, SW
Room CY-B402
Washington, DC 20554
(202) 857-3800

Lauren Kravetz (†)
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Room 4-A163
Washington, DC 20554
(202) 418-7944

Jim Bird (†)
Office of General Counsel
Federal Communications Commission
445 12th Street, SW
Room 8-C818
Washington, DC 20554
(202) 418-7802

Mary L. Brown (*)
MCI WorldCom, Inc.
1801 Pennsylvania Avenue, NW
Suite 9896
Washington, DC 20006
(202) 872-1600

Christopher Libertelli (†)
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW
Room 5-C234
Washington, DC 20554
(202) 418-7152

Matthew Vitale (†)
Telecommunications Division
International Bureau
Federal Communications Commission
445 12th Street, SW
Room 6-A821
Washington, DC 20554
(202) 418-0866

A. Richard Metzger, Jr. (*)
Lawler, Metzger & Milkman, LLC
1909 K Street, NW
Suite 820
Washington, DC 20006
(202) 777-7700

Philip L. Verveer (*)
Willkie Farr & Gallagher
1155 21st Street, NW
Suite 600
Washington, DC 20036
(202) 328-8000

Vonya McCann (*)
Sprint Corporation
1850 M Street, NW
Suit 1100
Washington, DC 20036
(202) 828-7400

Shannon K. Thrash

(*) First Class U.S. Mail
(†)Hand delivery